

EXHIBIT 6-B

PRECONSTRUCTION CONFERENCE PLANNING GUIDE

PRE-CONFERENCE PLANNING

1. **Identify and notify conference participants of the time and place of the preconstruction conference**
2. **Prepare the materials that will be needed for the conference** (e.g. agenda, notes, forms and posters, roster of expected participants, and current wage determination)
3. **Organize the materials into individual packets for each conference participant**

PRECONSTRUCTION CONFERENCE MODEL AGENDA

1. **Identify the official representatives of participating organizations**, including names, titles, business addresses, and telephone numbers for an official roster (include with minutes)
2. **Describe the responsibilities of the engineer or architect**, if applicable (responsibilities may include construction supervision, initial review of contractor payrolls, and certification of partial payment requests, etc.)
3. **Describe the responsibilities of the TSEP recipient (local government)** (responsibilities may include on-site employee interviews, posting of appropriate posters, and resolution of labor complaints, etc.)
4. **Describe the responsibilities of the contractor** (responsibilities include conformance to prevailing wage determination; assurance that subcontractors are bona fide subcontractors in compliance with Montana contractors licensing, wage and benefits bonding, and workers' compensation and unemployment insurance requirements; other applicable labor and civil rights requirements; and timely submission of required weekly payrolls, etc.)
5. **Outline and discuss contract terms** (e.g. timing of requests for partial payments, etc.)
6. **Outline and discuss schedule for construction completion** (contractor should provide timeframes for sequences of major construction activities from beginning of construction to final project completion)

7. **Describe the responsibilities of subcontractors** (primarily the same responsibilities as contractor e.g. prevailing wage rates, civil rights requirements, and compliance with Montana contractors licensing and workers' compensation and unemployment insurance requirements, etc.)
8. **Describe project inspection procedures** (responsibilities of TSEP recipient's Grant administrator for prevailing wage interviews, and engineer/architect for construction oversight should be discussed)
9. **Describe forms the contractor must submit** (refer to checklist supplement)

PRECONSTRUCTION CONFERENCE PLANNING GUIDE SUPPLEMENT

LABOR AND CIVIL RIGHTS REQUIREMENTS

The TSEP recipient should include the following information concerning compliance with state labor and civil rights requirements during preconstruction conferences for construction projects involving TSEP funds.

A. WAGE DETERMINATION AND EMPLOYEE CLASSIFICATION

Montana's prevailing wage law is applicable to all public works construction contracts awarded by TSEP recipients unless the state's requirements are preempted by the federal Davis-Bacon Act.

1. Laborers, mechanics, apprentices, and trainees must receive no less than the prevailing wages, plus fringe benefits paid for similar work in the locality. (Conference participants should be provided with a copy of the current state wage determination that has been established by the Montana Department of Labor and Industry (MDLI) and included in the contract document.)
 - a. Workers are covered by Montana prevailing wage law while engaged in working at the site (see definition "site of work").
 - b. Apprentices or trainees may be paid less than journeyman wages, if they are enrolled in an apprenticeship or training program approved by the U.S. Department of Labor (or State Apprentice Council recognized by the Department of Labor's Employment and Training Administration).
 - c. Montana law requires that all contractors and subcontractors working on a public works contract must post the current prevailing wages rates to be paid to employees in a prominent and accessible site on the project or work area not later than the first day of work.
2. If the contractor needs laborers or mechanics whose classifications do not appear on the state wage determination the local TSEP Grant administrator must make a request for an appropriate classification to the MDLI Research and Analysis Bureau (telephone: 444-2430). The MDLI staff will then provide a wage rate determination for the unclassified position.
3. Employees or supervisors working at other than their assigned classifications for 20 percent or more of their time must be paid and shown on the payrolls for each classification or, paid for all hours at the higher wage scale.

4. If the wage determination lists fringe benefits, the contractor must either provide them or pay the hourly equivalent in cash, in addition to the predetermined basic wage.
5. Claims and disputes should be reported in writing to the MDLI Labor Standards Bureau and to the MDOC TSEP staff liaison. Resolution of all claims and disputes must be reported to the MDLI. MDLI may be called upon to investigate and settle claims and disputes, or may enter of their own volition if the need arises.
6. Laborers and mechanics must be paid no less than once per week.

B. WORK HOURS, OVERTIME, AND SAFETY STANDARDS

1. Eight hours is the standard workday, forty hours is the standard workweek.
2. One and one-half times the basic hourly rate of pay, exclusive of fringe benefit payments, must be paid for all hours over forty in a work week. Note that the basic hourly rate of pay = the base hourly pay rate + zone hourly pay rate. Fringe is not included in the basic hourly rate of pay when computing overtime.
3. No worker can be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health and safety. The Federal Occupational Safety and Health Act of 1970 provides job safety and health protection for workers through the promotion of safe and healthful working conditions throughout the Nation. The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor has the primary responsibility for enforcing the Act. Requirements of the Act include the following:
 - (a) Each employer shall furnish to each of his employees employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious harm to his employees; and shall comply with occupational safety and health standards issued under the Act.
 - (b) Each employee shall comply with all occupational safety and health standards, rules, regulations and orders issued under the Act that apply to his own actions and conduct on the job.

C. DEDUCTIONS

1. Full wages earned must be paid.
2. Permissible withholdings include those for the employee share of medical or hospital care, pensions on retirement or death, life or accident insurance, or other deductions authorized by law and other deductions approved by the employee. Deductions are not permitted for damages, shortages, missing material, etc. unless authorized by court order.

D. CIVIL RIGHTS - EQUAL OPPORTUNITY EMPLOYMENT

1. The prime contractor and all subcontractors must ensure that employees and applicants for employment are not discriminated against because of race, color, national origin, religion, sex, marital status, age or physical or mental handicap.

E. PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS

Unless superseded by federal law, contractors must give preference to the employment of bona fide residents of Montana in the performance of work on public works projects.

F. CONTRACTOR REPORTING REQUIREMENTS

In conjunction with the previously mentioned labor and civil rights requirements, the prime contractor is required to periodically submit several forms to the TSEP recipient's grant administrator. The prime contractor is fully responsible for providing all reports required from subcontractors.

1. Each contractor (prime and sub) must submit (through the prime contractor) Certified Payroll Forms (WH-347) for each week from the time the project begins through completion. If the contractor prefers to use a form other than WH-347, it must contain identical information. Weekly payrolls should be numbered sequentially, and be submitted to the TSEP recipient no later than seven days following the end of the pay period. (Exhibit 6-C contains a blank Certified Payroll Form WH-347 and a completed example of WH-347.)
2. A completed Statement of Compliance with Labor Standards and Prevailing Wage Requirements must be submitted with each Certified Payroll Form. Certified payrolls must be submitted on a weekly basis whether or not work was performed. If no work was performed, the contractor should note this on the payroll. The Statement of Compliance appears on the back of form WH-347 or as form WH-348 if WH-347 is not used. (Exhibit 6-C contains a

sample Statement of Compliance (WH-348).)

3. The first week after work on the project begins the TSEP recipient's grant administrator should be supplied with the names of anyone (other than owner or officer) who is authorized to sign payrolls for each contractor (prime and sub).
4. The prime contractor must supply the TSEP recipient's grant administrator with the names of all subcontractors working on the project the first week after work begins, and the names of any new subcontractors immediately after they begin work on the project.
5. Subcontractors

Prevailing Wages

Contractual relationships between contractors and alleged subcontractors (who perform mechanic's work) which are formed for the purpose of evading the application of prevailing wage requirements are expressly prohibited and may provide a basis for debarment. Where there is any doubt as to the bona-fide nature of a self-employed subcontractor (a sole proprietor or working partner) who has no other employees, the following should be checked. At the time the contract was executed:

- a) Did the subcontractor have a current, valid exemption from payment of workers' compensation and unemployment insurance from the Montana Department of Labor and Industry (MDLI)?
- b) Was the subcontractor registered with MDLI?
- c) Did the subcontractor have liability insurance in force or a subcontractor's bond?
- d) Did the subcontractor have a Federal Tax Identification Number issued and evidence of payment of self-employment tax?
- e) Did the subcontractor have a registered trade name, and a telephone listing, printed invoices, business cards, business permits or licenses, or public advertisements under that name?

Use of these criteria in conjunction with a signed contract containing the TSEP labor provisions between a contractor and each such subcontractor should be sufficient to establish that he or she was a bona-fide subcontractor at the time the subcontract was executed. Such a subcontractor will submit

payrolls indicating only that he/she is the owner or partner, the hours worked and the classification. The phrase "self-employed owner" shall be written under the name, address, and Social Security Number (See Column 1 on Form WH-347). Non-bona fide self employed subcontractors must be carried as employees on the payroll of the contractor who engaged him/her, and must be paid the prevailing wage rate for the classification of work performed.

Workers' Compensation and Unemployment Insurance

Sole proprietors or working members of a partnership are exempt from workers' compensation coverage. Those who are bona fide independent contractors can be exempted from paying workers' compensation or unemployment insurance on themselves. However, they must have first complied with the MDLI independent contractor exemption requirements. If individuals do not meet the MDLI requirements for exemption, they are considered employees rather than subcontractors and must have workers' compensation and unemployment insurance coverage. The burden of proof is on the general contractors to prove the independent contractor status.

MONITORING AND SANCTIONS

- J. The TSEP recipient's grant administrator is responsible for monitoring the construction project to assure compliance with all applicable labor and civil rights requirements.**
1. On-site inspections must be conducted periodically by the TSEP recipient's to ensure that the required prevailing wages are posted.
 2. Weekly payroll reports of the prime contractor and all subcontractors must be examined by the TSEP recipient's grant administrator to ensure compliance with state prevailing wage requirements.
 3. At least once per month the TSEP recipient's grant administrator must conduct interviews with construction employees of the prime contractor and subcontractors. The interviews should be scheduled early into the first month of construction to assure initial compliance with labor standards, and on projects of a shorter duration, conducted midway towards completion. A representative of each classification of mechanic and laborer, and at least 10 percent of the work force should be interviewed during the term of the project. (Exhibit 6-E contains a sample Record of Employee Interview, and instructions for conducting employee interviews.)

4. Montana law provides that any contractor, subcontractor, or employer who pays an employee less than the required prevailing wage must pay the MDLI a penalty of up to 20% of the delinquent wages and fringe benefits plus court or attorney fees, and audit fees. They must also pay the employee the wages owed plus \$25 a day for each day the employee was underpaid. A contractor or subcontractor who is found by MDLI to have willfully violated the law can be barred from receiving public works contracts or subcontracts for a three-year period.

PRECONSTRUCTION CONFERENCE CHECKLIST

PRE-CONFERENCE PLANNING

- _____1. **Identify, and notify conference participants of the time and place of the preconstruction conference**
- _____2. **Prepare the materials that will be needed for the conference**
- _____3. **Organize the materials into individual packets for each conference participant**

PRECONSTRUCTION MODEL AGENDA

- _____1. **Identify the official representatives of participating organizations, including names, titles, business addresses, and telephone numbers for official roster**
- _____2. **Describe the responsibilities of the engineer, or architect, if applicable**
- _____3. **Describe the responsibilities of the TSEP recipient (local government's grant administrator)**
- _____4. **Describe the responsibilities of the contractor, including documentation of compliance with prevailing wage and equal employment opportunity requirements**
- _____5. **Outline and discuss contract terms**

- _____6. **Outline and discuss schedule for construction completion**
- _____7. **Describe responsibilities of subcontractors**
- _____8. **Describe project inspection procedures (responsibilities of TSEP recipient (local government's grant administrator), and engineer or architect)**
- _____9. **Forms and information the contractor must submit**
- _____ Certified Payroll Forms (WH-347) (Exhibit 6-C), or equivalent
 - _____ Statement of Compliance with Labor Standards and Prevailing Wage Requirements (WH-348) (Exhibit 6-C)
 - _____ Copy of the approved plan or program (if fringe benefits will not be paid in cash).
 - _____ Apprenticeship or training program agreement (if any apprentices will be working on the project).
 - _____ Names of persons authorized to sign payrolls
 - _____ Names of all subcontractors

CONTRACTOR'S RECEIPT OF REQUIRED PROGRAM MATERIALS

(Local Government) _____
(Project) _____

Preconstruction Meeting
(Date) _____

On (date) _____, we, the undersigned, attended the preconstruction meeting for the (local government's) _____ (project) _____. At the meeting, we acknowledge receiving the following information:

1. Preconstruction Conference Planning Guide Supplement
2. Weekly Payroll Report Form and Statement of Compliance Form (Exhibit 6-C)
3. Contractor Payroll Instructions for Completing Weekly Payroll Reports Using Payroll Form WH-347 (Exhibit 6-D)
4. Prevailing Wage Compliance Terminology (Exhibit 6-F)
5. State (or Federal) Wage Determination, Decision # _____

Contractor

Date